



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 14, 1996

Ms. Karen L. Horner
Assistant City Attorney
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR96-0184

Dear Ms. Horner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35816.

The City of Baytown (the "city") received a request for photographs and records relating to a particular accident investigation. You have released much of the requested information. You have submitted for our review two photographs and contend that they are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy or constitutional privacy.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). However, common-law privacy generally lapses upon the death of an individual. Open Records Decision No. 432 (1985). Texas courts do not recognize a relational or derivative right of privacy. *Wood v. Hustler Magazine*, 736 F.2d 1084, 1086 (5th Cir. 1984).

The right to privacy guaranteed under the United States Constitution protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 478 (1987) at 4. The first interest applies to the traditional "zones of privacy," *i.e.*, marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447

(1986) at 4. The second protects information by employing a balancing test that weighs the privacy interest against the public interest. Open Records Decision No. 478 at 4. It protects against "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

We have examined the photographs submitted for our review and conclude that they implicate only the common-law or constitutional privacy of the deceased person. You must therefore release the photographs.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/ch

Ref.: ID# 35816

Enclosures: Submitted photographs

cc: Mr. Todd W. Miller
12310 Woodthorpe Lane
Houston, Texas 77024
(w/o enclosures)